

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on January 5, 2018 with Chairperson Tom Harper and members, Carol Schlueter, Emily Geertz, Mike Birkinbine and Bill Tharp present. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator were also in attendance.

Also present for this hearing: Chad Sexton and Perry V. Hartman.

Tom Harper: I will open this public hearing of the Board of Adjustment and I will read the opening statement. The Zoning Board of Adjustment is a quasi-judicial board appointed by the Muscatine County Board of Supervisors. The Board's purpose is to interpret the Zoning Ordinance and to allow certain limited exceptions and variances where special conditions or hardships exist. We are an independent volunteer board of citizens and not part of the county administration. There are five members on the Board and we are all present today. State law requires three affirmative votes to approve any appeal under consideration, no matter how many members are present. As a Board of the County, we welcome all testimony. We make our decision based on the facts and evidence under county code, presented in open meeting. We ask that if you wish to speak, please give your name and address. Okay, we have a little business to take care of before we start. We have all received the minutes and resolutions from the last meeting and you should have all had a chance to read them. If there are no changes to either the minutes or resolutions I will entertain a motion to approve the minutes.

Bill Tharp: I move to approve the minutes as written Tom.

Tom Harper: Okay, is there a second?

Emily Geertz: Second.

Tom Harper: There has been a motion to approve the minutes of last meeting as written and it has been seconded. Any discussion? Hearing none, all those in favor of the motion please say Aye (5) Opposed (0). The motion carried. Eric do you want to read the first application?

Eric Furnas: Case #18-01-01. An application has been filed by Richard Holmes, Record Owner. This property is located in Moscow Township in the NE¹/₄ of Sec. 28-T78N-R2W, 2454 140th Street, Moscow, containing approximately 4.22 acres, and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order to continue to operate their semi's from their home located at 2454 140th Street in Moscow.

Tom Harper: Okay, is the applicant here?

Chad Sexton: Well I'm not Richard, I'm Chad.

Eric Furnas: He is one of the co-operators though.

Tom Harper: Okay you are representing Mr. Holmes?

Chad Sexton: Yes.

Tom Harper: Okay, can you please state your name and request and give us some background?

Chad Sexton: My name is Chad Sexton and we'd like to continue to operate our trucks. There's just the two of us, my uncles got a truck and I've got a truck.

Tom Harper: So how many trucks have you got there?

Chad Sexton: Just two, mine and his.

Tom Harper: Was there any correspondence?

Eric Furnas: No sir.

Tom Harper: Can we have any staff background?

Eric Furnas: I would just like to clarify that we have not initiated any enforcement action or any kind of action. He had been into the office to inquire about a structure to house his semi. And due to the operation we could not approve the building permit. We could not approve it because a truck terminal is not a permitted use in A-1 Agricultural District. So that's why we could not issue a building permit for a building to house his semi. So they did request a Variance in order to construct the building.

Tom Harper: Is there anyone here to speak for or against this request? If so, please state your name.

Perry Hartman: Perry Hartman. I own the adjoining property. I know that they have their trucks there. But I don't know who's homes those are that they pull around? But I have an easement that goes into my property there.

Chad Sexton: You mean the campers?

Perry Hartman: Yes. I have tried to get into my easement a couple of times, now it hasn't happened recently but there have been campers blocking me from getting into my property through a gate. I just want to make sure... I don't have a problem with this gentleman running his trucking business but I just want to make sure, number one, that you don't block my access with the campers. Number two, if this building is going to be approved and it gives me some type of obstruction getting into my easement ... I don't have any knowledge of where it's going or anything. I just want to make sure that it doesn't block my access. I am going to start using that easement in there and I don't want to be blocked out.

Carol Schlueter: Have you discussed that with them, this problem?

Perry Hartman: No, my only discussion was when this began... I had called the sheriff's department and this was several years ago. They wouldn't allow us to dump gravel there and I had a permit to do that. I just don't want to start this all over again where I can't get into my property. I can't say that it's happened lately but I just don't want to start having problems again. I don't know where this addition or building is going to be. If there are going to build an addition on the existing building it might be in the way of my easement.

Chad Sexton: I guess I don't know where the easement is.

Perry Hartman: Well it's the gate that goes past Bierman's.

Chad Sexton: Oh, well the proposed addition is going to go on the south side of the existing building.

Perry Hartman: Oh, okay than I have no issues.

Tom Harper: Okay, if you could make your remarks to us?

Perry Hartman: Okay, I'm sorry.

Eric Furnas: And really that is two separate issues. It really wouldn't have anything to do with this request.

Carol Schlueter: Okay, on this map can you show me where is Hartman and where is Holmes? (looking at the map)

Perry Hartman: Alright our gate is right there.

Carol Schlueter: And where is your residence?

Perry Hartman: Well I don't live here, this is my barn here.

Carol Schlueter: Oh so you don't live here?

Perry Hartman: Not now I don't. But we are thinking about building a home there.

Carol Schlueter: Okay, I see.

Perry Hartman: Yeah and I don't think it's this gentleman.

Tom Harper: If you are planning on building out there, there is this big white building right in the middle, is that where you are planning on building the addition?

Chad Sexton: Yes the south side of that building.

Tom Harper: To the south of it?

Chad Sexton: Yep.

Tom Harper: Okay, does anyone on the board have any comments, concerns...

Emily Geertz: I just have to say that I find it sometimes a tricky spot where ... like yesterday I drive by a guy who farms quite a bit and he's got seven grain trucks at his place and it's fine because it's zoned Ag and he can do whatever he wants. Then when somebody just has one or two trucks and they are actually trying to build a building to store them in and they have to go through this process, I find it... I mean, I don't know...

Carol Schlueter: So you think that they should be able to?

Emily Geertz: Yeah I think he should be able to do this, yes.

Carol Schlueter: I do too, I do too. If it's not causing any problems in the neighborhood... and you did say that there is no one that called and said anything against it?

Eric Furnas: No, no one. The issue is when you grant a Variance that would seem to undermine portions of the Zoning Ordinance...and agricultural activities are a completely separate issue.

Emily Geertz: I know.

Eric Furnas: If this was a case of a farmer who also did some off-season trucking, I don't think that we'd be here. We have all sorts of farmers today with semi's and if that's their primary occupation, farming, we don't consider them a truck terminal just because they haul grain for someone else during the winter or they haul livestock. Truck terminals are not defined by a certain size. If it's not ag related and it's a semi and a truck operation, it's a truck terminal. One of the issues today is the impact on secondary roads, and again farming we can't do anything about. We have embargoes nearly every year on certain secondary county roads and it is for heavier equipment that it outside the scope of farm exemption. I'm not saying that this is the case and

that road would be embargoed but when we start granting Variances we have to look at all of those impacts as well.

Mike Birkinbine: So you have been doing this... you have been trucking for ten years from here?

Chad Sexton: Yes.

Mike Birkinbine: The trucks have been there at this property for the past ten years?

Chad Sexton: There has been at least one. When my dad was alive he had at least one and my uncle still had a truck so even back then it was those two and then he died in 2007 and then I took the truck.

Carol Schlueter: Okay, I just want to understand this better, this person... I guess Richard Holmes come into your office and wanted to get a building permit, right?

Eric Furnas: Right.

Carol Schlueter: If he wouldn't have come in to do that we wouldn't be here today, right?

Eric Furnas: That's correct.

Mike Birkinbine: Because he's been doing trucking for ten years.

Carol Schlueter: But if he wouldn't have come in we wouldn't be here.

Tom Harper: Right. My only concern is that we have allowed this in the past on different cases but we also put limits on them. I know the one that we allowed has gone over the limit or maybe as stretched the limit, but they have several trucks, it is not just two. To me this is a very limited area here, you know. If it's overnight, weekend, whatever... parking of a truck... two trucks at the maximum... I guess I don't have an issue with it.

Carol Schlueter: I don't either.

Tom Harper: If they are not really primarily running a business out of it... if they are just parking the trucks there because that's their home base...

Carol Schlueter: And then you go get product and haul it, right?

Chad Sexton: Yes ma'am. We leave once a day and we come back once a day.

Carol Schlueter: Do you haul grain for farmers sometimes?

Chad Sexton: My uncle hauls grain and I haul turkey's.

Emily Geertz: Well it's ag then.

Carol Schlueter: Yeah.

Eric Furnas: No.

Emily Geertz: It's not?

Eric Furnas: No it's no different than an implement dealer. They provide a service or products to the farm or farmer. But just because of that doesn't mean it's an ag use.

Tom Harper: This property isn't big enough to support an ag operation, so therefore it's not an ag operation.

Carol Schlueter: Okay.

Bill Tharp: I guess the only thing I can say... I mean I might be completely alone in it but it looks like, and that's okay, but it just looks like the ordinance is very clear that this should not happen. And the Zoning Commission decides where certain things are supposed to happen. We are here just for things around the edges. If there are good reasons, you know... And we have requirements that say is there an unnecessary hardship? Is there a unique property limitation, or something like that. As opposed to, you know, will you guys be nice guys and not have the ordinance apply to me? In my opinion that's just not something that we can do as a board. We have to just follow the law and it's real clear that the Zoning Commission said that we don't want to have that kind of a business out there. I imagine part of the reason is because oil leaks out there from things like that... it is just natural. Then it goes out into the land and that land is really special because of the crops that can be grown on it. So to me it's very clear that the Zoning Commission has said that this kind of a thing cannot happen there. So I feel like our hands are tied or at least my hands in this situation would be tied. So that is just my opinion that our hands are tied that we can't make a Variance or any type of ... you know, to grant that request because it doesn't meet the requirements of the Variance. There is not a unique property limitation or there is other unique things to show that there is good cause for your property to be treated differently than everybody else's. So I feel for you but at the same time...

Chad Sexton: Well you say truck terminal, but we aren't trying to run a truck terminal we only have two trucks... there's no employees. And as far as your oil leaks, are you going to take our vehicles off of our property too?

Mike Birkinbine: Well I look at the uniqueness of the piece of property, and then I also look at the fact that they have been doing this for ten years. So I get it that there is an ordinance, there's regulations and rules that we have to follow but to me this is still a unique case in my eyes, right, wrong or indifferent. If he would have not gone down to get a building permit we wouldn't be sitting here.

Tom Harper: Now the Variance, is that permanent to the property? Does it stay with the property or can we stipulate that it just stays with them?

Eric Furnas: Well it would to this owner and applicant in my mind since this is a land use Variance. I guess I would just go a step farther and say that this particular issue is something that the Board of Adjustment really struggles with and to direct me to have the Zoning Commission look at this issue... not the home occupation but small trucking companies. I mean, this is not the first time that this has come up and I don't believe that granting Variances that is making exemptions to the Zoning Ordinance is the way to address that. If you folks feel that there needs to be some sort of a compromise for this type of operation, than maybe make that part of your motion to have the Zoning Commission look at that and then to consider that issue.

Tom Harper: Yeah in my mind any kind of motion should have some stipulations such as to limit the time of it and the amount of activity on it.

Mike Birkinbine: The number of trucks.

Eric Furnas: While helpful that also becomes very difficult to police. I think the one that you are referring to, you know, when you limit it to a certain number of trucks ... I think you had said eight. But if there are eight trucks parked

there and I don't know how many trucks are on the road or in California. And at any given time I don't know how many employees ... it's very difficult to police I think. That's why rules are written more clearly and that don't have a lot of stipulations.

Tom Harper: Yeah I think the major stipulation would be that it stays with this owner and it's not permanent.

Emily Geertz: But you are saying that that would be the case anyway?

Eric Furnas: I believe it would. I guess if the application were to be allowed I would like to see that be brought to the motion.

Mike Birkinbine: Yeah my only point Eric is the fact that if somebody came in and there is a new applicant that has asked to put trucks on there, it would be easy for me to deny it. I struggle with them, because you can't police it, because it's been going on for ten years, and they came in to do the right thing... I struggle with that piece of it. But if he was a new applicant that came in here and asked to build a building so he can house his trucks and trucking, that would be a different situation for me.

Eric Furnas: In my mind, and I understand what you are saying, but it almost encourages people to begin something to see how long they can get away with it, especially if people are taking the position that...well we feel for them but they have been operating here. I mean that's what we see sometimes, and I think that that encourages that type of behavior. And I'm not saying that that's the case here. And like I said we haven't received any responses nor were we pursuing any action. Just like any other criminal case, there is discretion on parts of enforcement agencies whether we are going after them. I know that the Board of Supervisors is kind of mulling this around in their head this idea, that's why I would love to see a recommendation that you feel that this is something that the Zoning Commission should look at. That maybe make that as part of your motion.

Bill Tharp: Yeah I think that would be good because the reason why I feel limited is because of the way the ordinance is written and it says this is what we need to do. That's just my opinion, and the good thing is that there are four others on this board that when I am wrong they can out vote me. That's just the way I see it. And it would be nice if this is something that the... I mean because I feel bad for a guy that's been doing it for a while and it's not a huge operation. So if the Zoning Commission and the Board of Supervisors can go ahead and make a change, so that we could get past this, that'd be great. So then we'd have direction.

Mike Birkinbine: So I hear Eric's point but I also struggle with the fact, and this is my opinion so I'm going to state it, there's farmers out there that have huge trucking operations and because it's set up as ag they can do that. They haul rock and everything else, so I struggle with that piece of it. When somebody has a couple of trucks and that's all they have and that's their livelihood... right, wrong or indifferent. And I understand that you can't please everyone and if you were to drive around the county you could find tons and tons of issues.

Carol Schlueter: But some farmers that have trucks haul grain for other people and it is a business. But we are just talking about this Variance for them to be able to run their semi's out of this property. This does not say that they are going to add onto the building and they can't add on, right?

Eric Furnas: Well if you allow the Variance that allows them to continue their operation with the trucks that they have then I would have no reason to deny a building permit for them.

Carol Schlueter: Alright, okay.

Eric Furnas: But I cannot permit the erection of a building whose primary activity was described as something that is in violation of the ordinance.

Carol Schlueter: Alright... can I suggest one thing? If this goes through and passes and if down the road you would like to build a building I would appreciate that you would talk to Mr. Hartman and tell him where you are going to put it so you don't block his driveway.

Chad Sexton: Sure and I was going to tell him that if there is any time that that is blocked or in your way just say something, you know?

Bill Tharp: And on the other side of it I think it's a good idea since you guys are neighbors that the best thing to do always is to try and talk to your neighbor first before going through some type of legal process or using a third party. Talking to them is always the best course of action.

Tom Harper: Alright if there are no more questions or discussion, I would entertain a motion to close the public hearing so that we can consider the matter.

Emily Geertz: I will move that we close the public hearing.

Tom Harper: Is there a second?

Carol Schlueter: I'll second it.

Tom Harper: Alright there has been a motion to close the public hearing on this case. Is there any other discussion on that? All those in favor of closing the public hearing please say Aye (5) Opposed (0). The motion is carried to close the public hearing on this case. Now is there any motion to take care of this request?

Carol Schlueter: You mean you want a motion ...

Tom Harper: A motion for this case.

Carol Schlueter: Okay, I will make a motion that we approve this Variance in order for them to continue the operation of this semi from the home located at 2454 140th Street in Moscow with the stipulation ... four semi's? Is that good enough?

Chad Sexton: That's fine, we're not going to go over that anyway.

Eric Furnas: Is that four tractors or two semi's and four trailers?

Emily Geertz: I don't know if we should set a number.

Carol Schlueter: Well do we have to set a limit on it?

Tom Harper: No.

Emily Geertz: No, they are asking for two semi's.

Carol Schlueter: Okay and it is staying with these people, right?

Eric Furnas: I would personally prefer some kind of a limitation as well as a recommendation for the Zoning Commission to look at it because if you just point blank make a statement that they can operate a privately owned

trucking company, and I'm not saying that they have any desire to, but they can bring in employees.

Tom Harper: Well do you want it a separate motion or do you want it as part of that?

Eric Furnas: You can make it in one motion... that you just recommend to the Zoning Commission to look at this.

Carol Schlueter: Okay I'm going to go back. The last one that we approved did we allow eight? Is that correct?

Eric Furnas: Yes I believe that was the number that you approved.

Carol Schlueter: Well then maybe we should keep it the same number as that one. I will make a motion that it will be allowed to have up to eight semi trucks and trailers, or whatever, the whole semi.

Eric Furnas: I would have a ... I hate to be this way... but I would have an issue with offering a stipulation for a Variance that exceeds what is actually being asked for. Because a Variance is to be the minimum relief necessary... that the board feels is necessary to accommodate the owner.

Carol Schlueter: Oh, so then we shouldn't add anything?

Mike Birkinbine: So currently its two trucks and two trailers.

Eric Furnas: Yes I believe that's what Mr. Holmes placed on the application.

Chad Sexton: Well my Uncle has a truck and a trailer. I own my truck, the trailers that I pull I do not own.

Carol Schlueter: But they aren't requesting any amount here. They are just requesting for their own semi's.

Eric Furnas: That's right so why would you make a stipulation that they can grow to eight?

Tom Harper: So just leave it.

Carol Schlueter: But it doesn't say how many so he can go according to whatever they want to do, right?

Eric Furnas: Unless you limit them to the current amount that they have now.

Carol Schlueter: Well that's not... to me I think that everyone has to have the ability to grow.

Eric Furnas: Then they should be in the appropriate zoning district then. I mean, where do you draw the line on growth?

Carol Schlueter: Yeah I agree.

Tom Harper: So just make a motion to approve it as stated and with a recommendation for the Zoning Commission to revisit this.

Carol Schlueter: I made that motion with every stipulation taken off. Do you got that Dixie?

Dixie Seitz: Sure.

Tom Harper: So then are you also recommending that the Zoning Commission and the Board of Supervisors revisit this zoning ordinance?

Carol Schlueter: Well that is separate right?

Emily Geertz: You can do it all in one.

Mike Birkinbine: It has nothing to do with the impact of this but it's just asking them to revisit the whole stipulation around this, which I think is fair.

Carol Schlueter: Okay, add it on.

Tom Harper: Is there a second?

Emily Geertz: I'll second that.

Tom Harper: Okay, the motion has been made to grant the Variance as requested by the applicant in order for them to operate their semi's from their home located at 2424 140th Street in Moscow and to also recommend that the Zoning Commission and Board of Supervisors examine and revisit this part of the Zoning Ordinance and maybe look at changing and updating the ordinance, and it has been seconded. Is there any other discussion? Are we all clear on this? All those in favor of the motion please signify by saying Aye (4) Opposed (Tharp). The motion is approved, the request is approved.

Eric Furnas: The Board of Supervisors will actually review the Variance. They can approve this decision or choose to remand it. You will get a letter of when that meeting is and can either attend or we will let you know the outcome after the meeting.

Chad Sexton: Thank you.

MUSCATINE COUNTY BOARD OF ADJUSTMENT
By Eric S. Furnas, Planning & Zoning Director

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on January 5, 2018 with Chairperson Tom Harper and members, Carol Schlueter, Emily Geertz, Mike Birkinbine and Bill Tharp present. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator were also in attendance.

Also present for this hearing: Megan Schoepf, Andrew Schoepf and Andrew Anderson.

Tom Harper: Eric, would you please read the next request?

Eric Furnas: Case #18-01-02. An application has been filed by James M. or Edith M. Groulx, Record Owners and Andrew D. or Megan D. Schoepf, Applicant and Proposed Buyers. This property is located in Bloomington Township, Mark Twain Meadows, Lot 4, 2697 Calaveras Lane, Muscatine, containing approximately 1.95 acres and is zoned R-2 Residential District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order to allow more than one kitchen facility in this single family dwelling.

Tom Harper: Okay and was there any correspondence?

Eric Furnas: The only correspondence I believe that we received is in your packet. It was an email that was forwarded to us and I believe it was from the chairman of the association. I also received some phone calls just wanting some clarification on the request. But we did not receive any correspondence.

Tom Harper: Okay, is the applicant here?

Andrew Schoepf: Yes.

Tom Harper: If you could please state your name and give us some background on the case?

Andrew Schoepf: My name is Andrew Schoepf and this is my wife Megan. We currently live at 1707 Pearlview Court and we are looking to purchase the house at 2697 Calaveras Lane. My wife's parents live with us currently and they are in their early 60's, but both have some significant health issues that prevent them from doing stairs. Right now we have an in-law suite for them in our basement currently. But we are looking for a house that would allow us to convert something on the main level for them to live in so that they are still with us but would provide them with a separately living area, if you will. Currently I think the code or whatever states that a single family dwelling... and with talking with Eric about permits to add on... that it is defined as having only one kitchen and housekeeping facilities. So that kind of brought up the need for this Variance.

Tom Harper: So you are looking at purchasing a single family dwelling and convert part of it to a mother-in-law or in-law addition?

Andrew Schoepf: Yes.

Carol Schlueter: But they want their own kitchen facilities?

Andrew Schoepf: Correct.

Bill Tharp: So instead of a single family residence you want to make it into a two family residence? So then you would have your family and then your folks?

Andrew Schoepf: Well at the same time we want to be able to use the space. I mean, we have all of our family reunions at our house so we want to be able to use that entire space and go between the areas. It's no different than having in it the basement but they just don't do stairs very well. So we are

wanting... you know, instead of having kitchenettes or whatever in their basement or even full kitchens in their basement, lots of people have that in their basements. This is just that it would be on the main floor. I don't know where it's going to end up but it's not going to be in the basement because they don't do stairs well. So we are trying to figure out how we can do that one house environment for family reunions and things and also get back and forth for them and for them because they are dealing with health issues. Also with the privacy issue so we don't have to cook at the same time. They are still young enough and able to do all of that on their own.

Tom Harper: Eric, do you want to give us the staff recommendation?

Eric Furnas: I think that Mr. Schoepf summarized it fairly well. The issue is the definition of a single family dwelling, which the Zoning Commission will actually be considering an amendment to that definition after your meeting this morning. But the current definition of a family talks about people that are related by blood with a single kitchen facility. We looked at that when Mr. Schoepf brought in his proposal. I think it is almost an outdated definition and it seems almost un-American to discourage people from having their elderly family members live with them. The intent of a single kitchen facility at the time when this ordinance was done, I believe, it was to provide some sort of safeguard against the conversion of a single family structure into a dual or multi-family structure.

Bill Tharp: As I understand it is also from, you know case law that I've seen, it's that there is a certain amount of refuse or other utilities like water going out into the sewer and things like that that happens with a single family but then you start adding more and more people then it adds to what goes out to the sewer and it gets clogged up and it's more than what it can handle. So if they know that, you know, like it's an apartment building they are going to have those sewers be a lot bigger and they will be able to handle it. But, I'm sorry, I cut you off...

Eric Furnas: And that is, I believe, a consideration as well, however our sizing for sewer systems is based on the number of bedrooms, which is really what dictates the total number of occupants. So if you have nine occupants sharing one kitchen and one bathroom or if you have nine occupants sharing three bathrooms, the total number of waste flow is the same. So I believe that you are probably correct and it was the initial consideration, however I've been in a lot of new houses and they do have separate kitchens. I believe that there is a way to do that and the Zoning Commission will be discussing that in the next hour. It could allow for a second kitchen facility with still having safeguards in place to make sure that it's not converted to a dual family or a multi-family dwelling. They should have common access through the interior so it is not a duplex that has its own access. This is simply because right now our code says that you cannot have two kitchens. So even if Mr. and Mrs. Schoepf wasn't even planning on having their other family and they just wanted a holiday event or a second kitchen, our code just doesn't allow for it. I think that with the design of the modern homes today, it has just become outdated. There are a lot of nice new homes that do have a second kitchen in the basement. And there are safeguards that we can put in place that would not allow it to be designed or to become a duplex or multi-family dwellings. So I believe in this case, part of the ordinance ... there is some unreasonableness in the ordinance. So the reason why they are asking for a Variance is because they are up against a time limit to purchase this house and changing the ordinance sometimes takes more time. So no matter the outcome of this Variance I am still going to have the Zoning Commission take a look at this definition.

Tom Harper: Okay, is there anyone here to speak for or against this request?

Carol Schlueter: I've got a question. Okay where you live now your parents are in the basement and they currently have a kitchen?

Andrew Schoepf: That's correct.

Carol Schlueter: So any house can have a kitchen in the basement but since they are wanting it on the main floor, they can't?

Eric Furnas: Well they currently live in the City of Muscatine. Technically to be legal in the county a house can only have one kitchen facility.

Carol Schlueter: So mine in the basement is not legal than?

Bill Tharp: I advise you not to say anything. (laughter)

Eric Furnas: That's why I want to reiterate, I'm fully aware that there are people that make these kind of accommodations out in the county, however, it's not creating a multi-family situation.

Andrew Schoepf: Well I think it even goes back to what the previous gentleman was talking about... there is an addition component to this too because what we are looking at doing is to converting the garage or building an addition. Now going through that permitting process or phase and asking Eric to give a permit for something that's not legal... I mean, that's not right. So we need to go through this process to make sure that it's on the up and up. I mean we want to do that right.

Emily Geertz: Well I don't have a problem with this.

Tom Harper: Any other comments or questions?

Bill Tharp: I just have to be snidely whiplash today. (laughter) Okay, the law is the law and I don't need to go into it, but ...

Mike Birkinbine: That's why we don't have a panel of lawyers. (laughter)

Bill Tharp: That's right, that's right, and that's a good thing.

Carol Schlueter: Okay, Eric what are your comments on this?

Eric Furnas: Well I think that his proposal is right in line with what I would like to see. I would like to see it constructed in such a way that it is not a separate dwelling unit, and I don't think that that is their intent at all. But it should be a stipulation that it will not be a separate dwelling unit, that it will not have a separate address, that they will have common utilities and be accessible... that the entire structure will be mutually accessible from the common area. Does that make sense?

Emily Geertz: Yes.

Tom Harper: So basically right now... I mean we are not here to debate the Zoning Ordinance but if you build a structure, a single family dwelling with an attached garage and you decide to have an apartment above that garage but it still shares the same entrance and all of that, you can't do that?

Eric Furnas: It depends upon how you are using it. If you have your older son living there and it is just another part of the structure...

Emily Geertz: And it has a separate kitchen.

Eric Furnas: Well right now we couldn't allow a building permit for a second kitchen. People make additions as their families grow they usually are bedrooms and bathrooms. Now they are aware that if they add a number of bedrooms that they might have to upgrade their existing septic system.

Tom Harper: I think it is somewhat a hardship the way the ordinance is and it does create a hardship, to me. The ordinance is the hardship for the families and the people that want to do this, whether it be their parents or their older aged kid, whatever.

Andrew Schoepf: Well we have been looking for a long time, this is our realtor here as well. We have been looking for a long time for something that would fit our arrangement and you are right, I think it is the ordinance itself. I don't think it's specific to that property, necessarily.

Tom Harper: Yeah there are houses that I know that are built with the in-law apartment. It is not separate. It is part of the whole structure.

Mike Birkinbine: I commend you guys that you are actually going to take care of your parents. I'm waiting for my kids to say that they are going to build in the back for us. (laughter)

Andrew Schoepf: Thank you.

Eric Furnas: I agree with Bill, if you believe that this isn't the most appropriate way and if you believe that there is an issue with the ordinance, this was just the only way under their time frame and they wanted to pursue this. If the county feels that there is an issue with the ordinance, changing the ordinance is the most appropriate way in the long term. A person is always welcome to apply for a Variance. I don't tell them that they can't, even if we are working on changing the ordinance.

Mike Birkinbine: Yeah and I think it is clear that we need to go back and look at it.

Eric Furnas: And we are today but it might just take another month to get there if the Zoning Commission decides to upgrade that definition.

Tom Harper: Okay, if there is no other discussion I will need a motion to close this public hearing so that we can move onto voting on this application.

Mike Birkinbine: I will make that motion.

Tom Harper: Is there a second?

Emily Geertz: I'll second.

Tom Harper: All those in favor of the motion to close the public hearing please say Aye (5). The motion has passed, the public hearing is closed. Now is there any discussion amongst the board members here, or is there a motion to take care of this request?

Mike Birkinbine: I make a motion to approve this Variance in order to allow more than one kitchen.

Tom Harper: Alright, is there a second?

Carol Schlueter: I'll second it.

Tom Harper: There has been a motion and it has been seconded to grant the Variance as requested. Any other discussion, questions or comments?

Hearing none, all those in favor of the motion signify by saying Aye (4)
Opposed (Tharp).

Bill Tharp: I'm glad that I'm overruled, but I'm voting no.

Tom Harper: Alright, the motion has passed, the request is approved. Eric will need to let you know about it going before the Board of Supervisors. Is there any other business? Hearing none, then we are adjourned.

MUSCATINE COUNTY BOARD OF ADJUSTMENT
By Eric S. Furnas, Planning & Zoning Director